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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS: WHAT ARE THE STEPS FOR DEMOCRACY AND POLITICAL RIGHTS?

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Abstract: This work has focused on some latest cases of the African Court of Human and Peoples' Rights. The present work gives an introductory survey of political and electoral rights in the African region. That is, notions that have to do with good governance, the rule of law and the promotion of democracy in African countries. The relative withdrawal from the declaration for access to justice that highlights private individuals as a possible subject together with the non-governmental organizations, i.e. the Afr.CT.HR is now a path that seeks the protection of human rights and democracy. This path seems problematic and difficult, but at the same time it helps the evolution of the protection of human rights.

Keywords: international protection of human rights; African courts; case law; political rights; democratic participation; rule of law.

INTRODUCTION

The African Court on Human and Peoples' Rights (Afr.CT.H.R) from its birth up to the present day has received many appeals as well as made decisions on requested opinions[1]. It is very important to argue for this court due to the peculiar area that it is located and what it represents, i.e. a socio-political, cultural history in the African continent with the

1Report of the African Court on Human and Peoples' Rights (AfCHPR), 1 January-31 December 2021: https://www.african-court.org/wpafc/activity-report/

final goal of settling disputes and creating a jurisdictional authority for the freedoms recognized in the Charter of the rights of man and peoples in 1981[2], the so-called Charter of Banjul. The guarantee of these rights as well as the influence and consolidation of regional protection mechanisms, it relied on European and inter-American systems that transformed the organization for African unity in 2000. An important step which, through its commission, was joined in the Afr.CT.H.R. The jurisdictional nature was not immediate but began to exist in 1998 with the adoption of the additional protocol to the African Charter and followed in 2004 with the entry into force of the same protocol and with the achievement of the minimum number of required ratifications. The first ruling on the matter was issued in 2013, thus breaking a long history of measures without results which for years had excluded the continuation of judgments with final sentences.

We noted that the inadmissibility was based on judges and appeals that were brought against entities other than States parties to the additional protocol and/or brought by individual citizens or non-governmental organizations that were not among the authorized subjects to directly appeal to the Afr.CT.H.R, with the exception of the called State that has not filed a formal declaration of acceptance of that option.

In particular, we must say that the NGO had acquired the status of

2According to the case: Onyachi v. Tanzania, Judgment, Afr. Ct. H.P.R. of 28 September 2017, par. 13: "(...) the Court (...) as an international judicial organ, is deemed to take judicial notice of international law, and is therefore required in a case falling under Article 53 of the Statute, as in any other case, to consider on its own initiative all rules of international law which may be relevant to the settlement of the dispute. It being the duty of the Court itself to ascertain and apply the relevant law in the given circumstances of the case, the burden of establishing or proving rules of international law cannot be imposed upon any of the parties, for the law lies within the judicial knowledge of the Court (...)".

observed member in the African Commission according to Articles 5.3 and 4.6 of the protocol (Badugue, 2020). The lack of jurisdiction in the first phase was "necessary" due to reasons relating to the matter to be judged that were extraneous to the foreign sphere and reserved to the Court. The latter dealt with disputes relating to the interpretation and application of the Banjul Charter, the Additional Protocol and any other instrument for the protection of fundamental rights which was ratified by the States involved in the dispute according to Articles 3, lett. 1 and 7 of the protocol. The necessary quality of "victim" was not needed to present or denounce a situation that violated a right (Badugue, 2020)[3] and which was opposed to the choice of subordinating the direct access of citizens and NGOs to internal appeals, as well as to the express acceptance of this faculty by the State to which it belongs and to the authorization of the Court[4] itself.

As can be understood, the jurisprudence of the Afr.CT.H.R began very slowly and with organizational and practical problems, following during the years in the litigation an activity of several dozen decisions on the merits as established by the Protocol and as it was stated that:

"(...) the Court has charted a viable path for the protection of human and

3Afr.CT.H.R, case Tanganika of 2013 and in XYZ and Noudehouenou cases of 2020: "(...) does not require that the applicants have a specific interest in applying to the Court, since it is in the public interest to act for the protection of the rights recognized in the Banjul Charter and in other ratified treaties (...)".

4The following are empowered to activate the Afr.CT.H.R, without further formalities the African Commission, the States that have lodged an appeal with the Commission, the States against which an appeal has been addressed to the Commission, the States whose citizens have been victims of violations of fundamental rights and, the African intergovernmental organizations (art. 5. 1 Prot. add.). Furthermore, any State interested in the case submitted to the Court may request to appear as a party in the process (art. 5.2 Prot. add.), but up to now this faculty has never been used .

> peoples' rights on the continent, brought about renewed hope and optimism within the African human rights system, and positions itself firmly as a pivotal instrument in the continent's quest for regional integration, peace, unity, good governance, respect for human rights and development (...)"[5].

The role of the Afr.CT.H.R in the African regional system in relation to the protection of rights has been consolidated through two very encouraging orientations. On the one hand there is a constant and generalized non-compliance of the States that are defendants in court and at least partially found guilty by the judges of Arusha. The relative withdrawal of the declaration that allows citizens and NGOs to apply directly to the Afr.CT.H.R was a very important step not only for the history of the Court but also for the protection of human rights and democracy, despite the countries that have distanced from pronouncements of statements after the related sentences they have suffered[6]. The task of the Afr.CT.H.R is definitive, precise and important for the promotion of the rule of law and democracy. This is a delicate task that is often difficult and obscure on the part of national governments and their respective political and economic interests which is often interpreted as a refusal to commit to external judicial controls not because of the lack of effective monitoring mechanisms on the execution of Afr.CT.H.R sentences but due to the unlikely reversals of conduct relating to state authorities, the efforts produced by regional guarantee institutions and the formation of a shared culture of human rights in Africa. It seems that the non-paternalistic awareness that the democratic West is able to offer in Africa and its peoples occurs

5Report of the African Court, op. cit., par. 64.

6The effects of the relative withdrawals become effective one year after their filing. We note the recent deposits of Tunisia (2017), Gambia (2018), Niger and Guinea Bissau (2021). The other States that have issued the declaration are: Burkina Faso, Mali, Malawi and Ghana.

many challenges.

POLITICAL PARTICIPATION IN THE AFR.CT.H.R: THE CASE OF TANZANIA

The words democracy, rule of law, political rights, pluralism, protection of human rights, balance between the powers of peace and development are very important theoretical notions for the African history and for the examination of the Afr.CT.H.R. Rights that include and concern internal conflicts, ethnic-religious tensions, serious crimes and gross violations that question the legitimacy of the powers of the executive and remove the limit on the renewal of the mandates of the President of the Republic. The transparent process that is followed to reform the electoral legislation with the introduction of the related requirements especially when the parties' access to parliament is hindered is an attack against democracy which includes the use of the police and the army and other rights involved such as freedom of association, demonstration by representatives of civil society and the academic environment, deprivation of personal liberty, repression, violence, threats and intimidation, protests carried out by opposition forces where leaders are forced to find refuge abroad above all for a free and fair respect to the carrying out, the presentation of the candidates to the votes and the surveillance of the electoral bodies in an impartial and independent way. Cases that many times reminiscent of other areas of the planet beyond Africa. We recall the case of Tanzania, Benin and Ivory Coast, partly free countries away from hybrid regimes.

All these issues are part of the tasks that the Afr.CT.H.R deals with and which comes to judge according to the citizens' initiative and the NGOs

for the repression of violations of the rights to participation in the national authorities. The protection of rights, the rule of law and good governance are part of the preamble and particularly of the Articles 3 and 4 of the African Union, i.e. legal instruments that are mentioned in the African Charter on human and peoples' rights, the related Protocol of ECOWAS for democracy and good governance and, the African Charter for democracy, elections and governance.

As for the Banjul Charter (1981) which came into force in 1986, it is dedicated to the rights of citizens:

> "(...) to freely participate in the management of public affairs of their country, either directly or through representatives chosen on the basis of legal provisions" (Art. 13.1).

Part of this framework is also the prohibition of discrimination, the freedom of expression, the right to education and participation in the cultural life of the community, the rights of peoples to peace, security and to a satisfactory environment conducive to development.

Equally important is the protocol of ECOWAS (2001) which entered into force in 2008 (Saka, Amusan, 2022)[7]. It includes only the sub-continental area and refers to the Democracy Charter (2007) which entered into force in 2013[8]. The Afr.CT.H.R considers as human rights instruments of a disciplinary nature the mechanisms that ensure the enjoyment of rights recognized as those referred to by the ECOWAS protocol. It identifies a series of widely shared principles, including the separation of powers, the independence of the judiciary, access to power through free, fair and transparent elections, citizen participation in decision-making processes, secularism and religious freedom, multi-partyism,

7The ECOWAS Protocol has been ratified by thirteen of the fifteen States that make up the Economic Community of West African States.

8The Charter has been ratified by 34 States.

freedom of association and of the press, the judicial protection of rights and, the apolitical nature of the armed forces. Moreover, it dictates electoral rules; provides for monitoring and assistance by ECOWAS bodies, at the request of the States, in the conduct of elections; regulates the role of the armed, police and security forces in defending the independence, territorial integrity and democratic institutions of States; commits the latter to respect the principles of rule of law, good governance and human rights as preordained to safeguard social justice, political stability, peace and democracy. Such measures referred to are assisted, rather than by bland sanctions provided for in the Protocol, by the jurisdiction of the ECOWAS Court which, on electoral processes, has developed a jurisprudence very close to that of the Afr.CT.H.R (Wiebusch, Aniekwe, Oette, Vandeginste, 2019; Obiageli, Okechukwu, 2021).

The Protocol of ECOWAS and the related principles are also confirmed in the Charter on Democracy, Elections and Governance which is followed previously by the adoption of various other documents, among which we can refer to the Declaration of the African Union on the principles governing democratic elections in Africa (2002). The Charter places the responsibility of the States parties to prohibit any form of discrimination and to promote rights, including freedom of expression and the right to education, as they are inextricably linked with the values of the rule of law, democracy, popular participation and good governance to be achieved through transparent and accountable institutions. Furthermore, it insists on the objective of promoting the quality of elections, regulating both access to political power and the methods for exercising it and paying particular attention to unconstitutional regime changes, which unfortunately are not

uncommon on the continent. Also for this document, the sanctioning system and the chosen monitoring mechanism prove to be weak, which is based on the transmission of periodic reports by the States, i.e. obligation poorly observed in practice (Kioko, 2019; Niyungeko, 2019; De Groof, Wiebusch, 2020; Brett, Gissel, 2020; Mendes, 2022).

The departure of the case law history of the Afr.CT.H.R began with the Tanganika Law Society and others case after a related complaint by a citizen and two NGOs (Gathii, 2013-2014; Alter, Gathii, Helfer, 2016; Makulilo, 2017; Daly, Wiebusch, 2018; Reventlow, Curling, 2019; Murray, 2019; Jalloh, Clarke, Nmehielle, 2019; Plagis, 2020; Izuora, 2022; Ombrella, 2023)[9] which in practice referred to the violation of the principle of the rule of law and the continued violation by Tanzania of the freedom of association, the right to participate in public affairs and the prohibition of discrimination, since the 1977 Constitution, following the revisions of 1992 and 1994, illegitimately excluded (and still excludes) "independent" candidates, i.e. those who do not belong to a political party or are not proposed by it, from competitions for the office of President of the republic, member of parliament and local government bodies or nominated. Overall, the violations resulted in the non-compliance with the provisions contained in the African Charter of Rights (Articles 2, 10 and 13.1) and in the International Pact on Civil and Political Rights of 1966 (Articles 3 and 25) (Murray, 2019; Badugue, 2020)[10].

9Afr.CT.H.R, Case 9/2011 (Tanganyika Law Society and The Legal and Human Rights Centre v. United Republic of Tanzania) and the n. 11/2011 (Reverend Christopher R. Mtikila v. United Republic of Tanzania) with final sentence of the two cases in 14 June 2013.

10Afr.CT.H.R, Case n. 11/2011 (Reverend Christopher R. Mtikila v. United Republic of Tanzania).

In relation to the case, the panel unanimously declared that the government of Tanzania had violated the freedom to participate in the government of the country and the freedom of association; while the majority confirmed the violation of the principles of non-discrimination and equality before the law. Consequently, the government was required to adopt the constitutional, legislative and all those necessary to remedy measures, within a reasonable time and inform the Court itself of the relative reparations for the damages suffered[11]. The national applicant had failed to prove both attorneys' fees and pecuniary damages; therefore, under these aspects, the application could not be accepted due to non-pecuniary damage, also unproven. The Afr.CT.H.R concluded that the decision on the matter, with the prescriptions set out therein to be paid by the State, had to be considered an adequate form of compensation for the victim. The reparations case is not based so much on the omissive behavior of the victim, which unfortunately precluded the attainment of the right compensation, but rather on the inertia of the Tanzanian authorities with respect to the verdict of the Court of 2013. The panel was unanimously forced to reiterate the order to the State to send a report on the measures taken and to arrange for the publication of the sentence at its own expense, both by summary in English and Swahili in the official gazette and in a national newspaper (Murray, 2019; Badugue, 2020).

Equally important was the Jebra Kambole case which began after an appeal by a Tanzanian citizen who complained for the violation of the provisions of the Banjul Charter relating to the duty of States to take the necessary measures for the implementation of rights, to guarantee

11See art. 27 of adittional Protocol.

the principle of non-discrimination and equal protection before the law, as well as the right to invoke judicial protection (Articles 1, 2, 3.2, 7.1 a) of the Charter) (Murray, 2019)[12]. The case concerned the prohibition, enshrined in the Constitution (Article 41.7), to challenge the outcome of the presidential elections once the electoral commission had proclaimed the candidate winner. Reasoning on the concept of discrimination with reference to some international documents and rejecting, in the present case, the doctrine of the margin of appreciation which the government had also invoked[13]. According to the majority of the college the absence of judicial remedies to challenge the results of the presidential elections resulted in an unreasonable difference in treatment between the supporters of the winner, who evidently have no interest in contesting anything, and that part of the electorate who, in a multiparty democracy, could instead have reason to complain about the conduct of voting operations, despite the scrutiny of the electoral commission, and to claim the protection of one's rights before a third judge. However, the Court was divided: - as well as on the point of admissibility - also with regard to the evaluation of the other grounds for appeal to recognize, from time to time with different majorities, the remaining violations complained of with the decisive vote of the president of the college - which allowed acquit the State which referred to the infringement, not found in the case, of the principle of equal protection before the law. Tanzania was ordered - in addition to publishing, as usual, the text of the sentence - to amend, within a reasonable time, Article 41.7 of the Constitution to bring it into compliance with the provisions of the

12Afr.CT.H.R, case 18/2018 Jebra Kambole v. United Republic of Tanzania of 15 July 2020.
13See the dissenting opinion of judge B. Tchikaya, par. 12.

African Charter, to report within twelve months on the measures adopted and to transmit further reports at close range (every six months), until the Court was satisfied with the full implementation of its ruling. With regard to the remedial measures ordered by the Court, the passage which highlights the vulnerability inflicted on the exercise of numerous rights proclaimed in the Banjul Charter is the "key to political participation guaranteed under Article 13 of the Charter (par. 122) (...)" (Murray, 2019). Respectively to the Tanganika case, the Afr.CT.H.R spoke optimistically for a "partial compliance", stating that:

> "(...) the State has reported that the constitutional and legislative measures required are contingent on the holding of the referendum for which the respondent has not provided an indication of when it is planned to be held (...)"[14].

After the Jebra Kambole case we have not noticed and seen the same attention from the national authorities and an adequate implementation of the orders given by the Court itself. With the withdrawal of the declaration, Tanzania has practically demonstrated its relative willingness to withdraw a sentence from the Arusha judges for the future.

THE EXPERIENCE OF THE IVORY COAST

Going through the judicial history of Ivoiry Coast we can speak of a partial compliance that has been expressed by the Afr.CT.H.R itself for the related conduct and the solution of disputes against it which have as their object the composition of the related commissions that are formed at national and local level. The first judgment was promoted by

14Activity Report of the African Court of Human and Peoples' Rights (ACHPR), 1 January-31 December 2020, par. 18: https://www.african-court.org/wpafc/report-of-the-african-court-on-human-and-peoples-rights-afchpr-1-january-31-december-2021/

the related NGO Actions for the protection of people's rights (APDH) (Niyungeko, 2019; Kouame, Judicaël Tiehi, 2020)[15] and ended with the relative conviction of the State involved now recognized as guilty because violated the obligation to establish electoral bodies of an independent and impartial nature, as well as the right to equality before the law and equal protection of it. In particular, the Afr.CT.H.R condemned the respondent State to reform the legislation on the matter[16], pronouncing among other things on the criteria useful for identifying the "instruments in the field of human rights" which, pursuant to Article 3 of the Additional Protocol of 1998, can serve as a parameter in its judgments. The judges clarified that it is necessary to consider the purpose of these instruments, which can be obtained from the express statement of individual or collective rights or from the provision of binding obligations for the States parties and aimed at ensuring the enjoyment of these rights. In the present case, not only the African Charter (Articles 3 and 13) and the UN International Pact on Civil and Political Rights (Article 26), but also the African Charter on Democracy (Articles 10.3 and 17) and the ECOWAS Protocol on democracy (Aricle. 3), had those characteristics, expressly providing for the obligation to establish independent and impartial electoral bodies, in order to guarantee citizens the right to vote and the right to

15Afr.CT.H.R., Case 1/2014, Actions pour la protection des droits de l'homme (APDH) v. Côte d'Ivoire of 18 November 2016: "(...) Articles 3 and 13(1) and (2) of the [African] Charter on Human [and Peoples'] Rights, Articles 10(3) and 17(1) of the African Charter on Democracy, [Elections and Governance], Article 3 of the ECOWAS Democracy Protocol [ECOWAS Protocol on Democracy and Good Governance], Article 1 of the Universal Declaration of Human Rights and Articles 26 of the International Covenant on Civil and Political Rights (...)".

16The Law 2014-335 which amended the law 2001-634 on the composition, organization, powers and functioning of the independent electoral commission (IEC).

participate in free elections. The requirement of independence of these bodies must be measured on the basis of the degree of administrative, financial and institutional autonomy recognized by the law, which must also guarantee their balanced composition, in terms of representation of the government and opposition forces (§118 ss). It is possible to strengthen the perception at a social level of the conditions of independence and impartiality (§133) which find expression in the ability of these bodies to organize truly "free, fair and transparent elections (...)" (Kouame, Judicaël Tiehi, 2020).

The electoral commissions[17] did not prevent the Ivorian citizens from activating the Court, however they invoked the parameters mentioned above and the doubts regarding the composition of the electoral commissions. For the Suy Bi Gohore Emile et autres case (Makunya, 2021)[18] the Afr.CT.H.R has denied the positions imposed by the respondent State, competent to monitor the execution of its decisions limiting itself to ascertaining the infringements of fundamental rights and without considering the disobedience of Article 30 of the additional protocol as provided for by par. 59, as a violation of the law[19]. The

17See the Law 2019-708, shortly thereafter modified with Order n. 2020-306: "(...) a parliamentary minority, first, and, a few days later, the same subjects who would then turn to the Afr.CT.H.R, had proposed separate appeals before the Constitutional Council, which (...) had declared them all inadmissible (...)".

18Adr. CT.H.R., Case 44/2019, Suy Bi Gohore Emile et autres v. République de Côte d'Ivoire of 15 July 2020.

19Which is declared that: "(...) the States Parties to the present Protocol undertake to comply with the judgement in any case to which they are parties within the time stipulated by the Court and to guarantee its execution (...)". See also the case n. 65/2019, Sebastien Germain Marie Aïkoue Ajavon v. République du Benin of 29 March 2021, par. 16: the Afr.CT.H.R acknowledged that: "(...) with appeal 3/2017, the State had presented a request for interpretation of the judgment on the merits, but the Court ruled, on 28 September 2017, for the inadmissibility. Among the reasons given, it seemed to the judges

Afr.CT.H.R thus recognized the persistent work of the Ivorian authorities and the compliance that allowed the acquittal of the respondent State for the profiles reported. Despite the fact that there is no uniform model recognized in Africa, the formation of these bodies have precise characteristics, of a political, legal and historical nature and above all after the modifications that are made in relation to the objective of fair representation of the governing party and the opposition forces in the choice of components and electoral bodies. The Court in the argument for compensation for damages affirmed, rectius reiterated the possibility of completing the implementation of the discipline and of assuming the relative non-legislative measures to correct the imbalance that remains and compromises citizens' trust, transparency in public management and the participation of the democratic life of the community with the obligation for the State to report the obligations until their total satisfaction. However, The Court has responded to this only periodically.

THE EXPERIENCE BROUGHT FROM BENIN

In the case that comes from Benin the Afr.CT.H.R is invited to comment on topics such as political pluralism and democratic institutions.

We refer in the XYZ case (Makunya, 2021)[20] after the statements of a Beninese citizen who relied on the Protocol of ECOWAS and especially on Article 3 regarding the violation of the obligation to guarantee the independence and impartiality of the electoral bodies and the "*Conseil*

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of Arusha that the Ivorian government did not intend to receive a clarification on the execution of the sentence, but rather to know how to implement it, which, in the Court's view, is the responsibility of the State of Côte of Ivoire (...)".

20Afr.CT.H.R, Case 59/2019, XYZ v. République du Benin of 27 November 2020.

d'orientation et de supervision de la liste électorale permanent informatisé" (COS-LEPI), as well as of the "*Commission électorale nationale autonome*" (CENA). In practice, he complained that:

> "(...) the clear prevalence, within the aforementioned bodies, such as within the National Assembly, of pro-government representatives and the absence of a serious representation of opposition parties (...) led to the conclusion, in the appellant's assessment, for the illegitimacy and illegality of the composition of the National Assembly, as well as for the equally illegitimate reform of the Electoral Code[21] which the Assembly had approved less than six months before the holding of local elections - held on 17 May 2020-contrary to what is sanctioned by the ECOWAS Protocol (Article 2.1) (...) those elections would not have been held in a free, fair and transparent way (...)" (Makunya, 2021).

It is a classic case of political pluralism and democracy given the insufficient representativeness of the National Assembly and the relative illegality of the local electoral procedure which could not be annulled but rejected because it did not exist at a given date for carrying out the related voting operations and according to the violation of Article 2.1 of the ECOWAS protocol. In the case in question, the relative right to participate freely in the conduct of public affairs of the country according to Article 13, par. 1 of the Banjul Charter resulting from a lack of the requirements of independence is impartiality. This is the main task of the State to take the relevant measures as well as to resolve the situation which in practice it has not done.

Going one step further and in the same spirit, is the Ajavon case[22]. Here,

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21The Electoral Code, adopted with Law n. 2018-31, was first modified with the law 2019-43, and then followed by law no. 2020-13.

22Afr.CT.H.R, Case 62/2019, Sebastien Germain Marie Aïkoue Ajavon v. République du Benin of 4 December 2020.

too, a Beninese citizen complained of an infringement of numerous civil and political rights on the basis of the Banjul Charter, the 1966 UN Treaty, the ECOWAS Protocol and the Charter on Democracy. The Afr.CT.H.R examined the violations of rights that had taken place in connection with the legislative elections of 28 April 2019. By reconstructing the profiles directly relevant for the purposes of this reflection, it found the prejudice inflicted by the national authorities regarding the principle of non-discrimination, freedom of association and the right to participate freely in public affairs due to the prohibition of independent political candidates, introduced by the reformed Electoral Code, and the obligation of residence on the territory of the State imposed without distinction to all citizens as a condition of eligibility; to the freedom of political association resulting from the dissolution of parties that do not present candidates for two consecutive electoral rounds, in accordance with the provisions of the Charter of political parties[23]; to the obligation to establish independent and impartial electoral bodies, as recognized in the previously examined sentence, due to the fact of having illegitimately entrusted the Minister of the Interior with control functions with respect to the electoral procedure. The violations of rights resulted from the lack of independence of the Superior Council of the Judiciary and the Constitutional Court, the composition of which largely depends on the discretionary power of the executive and the President of the Republic[24].

We pause to say that the Constitutional Court has a very important and significant role since the relative order has to do with the role of the

23Adopted with law n. 2018-23.

24According to art. 115 of Constitution and the decision DCC 18-199 after the revision of the constitution of 2019.

electoral judge who is invested with any litigation on presidential and parliamentary elections as well as supervising the conduct of electoral procedures and the announcement of the related results of the presidential elections and the referendum consultations according to Article 117 of the Constitution. The Afr.CT.H.R thus recognized the violation of the principle of national consensus which was already envisaged and sanctioned by art. 10.2 of the Charter on democracy and the extensive constitutional revision with a tried and unanimous vote and without a popular referendum by the National Assembly[25] which was constituted for the elections of the 28 April 2019. As was obvious the relative legitimacy of the constitutional judge was judged (Murray, 2019)[26], where the Afr.CT.H.R has taken the necessary measures to eliminate the violations that are referred to the same court and on the implementation of the relative decision.

The related discourse produced and based on political rights, democratic participation due to the prohibition of independent candidates and the failure to respect the rule of national consensus was re-proposed by the African court in the Noudehouenou case (Kassie Abebe, 2019; Makunya, 2021)[27]. It was decided in the same session as the

25See law n. 2019-40. According to art. 154.1 of the Constitution: "(...) for the approval of a constitutional revision, a qualified majority of three quarters of the members of the National Assembly is required (...)"; and art. 155 of the constitution: "(...) the referendum is obligatory only if the parliamentary consensus is not greater than or equal to four fifths of the members of the Assembly (...) in this case the consensus was unanimous.

26See Décision DCC 19-504.

27Afr.CT.H.R, Case 3/2020, Houngue Eric Noudehouenou v. République du Benin of 4 December 2020. According to the Afr.CT.H.R: "(...) in this decision (parr. 61-62) and in the decision on the Ajavon case (parr. 337-338), the Constitutional Court of Benin had tried: "(...) in 2006 and 2010, to define the concept of "national consensus", which it does not identify with the principle of unanimity, but requires that political choices be adopted, in

one just examined that the electoral matter, here again the subject of litigation, is certainly of general interest, regardless of the status of victim of the applicant. The panel confirmed that the amendment to the Constitution, created by the unicameral and de facto one-party parliament, in addition to being illegitimate in itself, had compromised the exercise of some rights, including the freedom of association and the freedom to take part in public affairs. In this circumstance the Court tried to anticipate it, urging the State to promptly take the necessary measures to revise both the constitutional reform law and the other related laws, in order to guarantee citizens the freedom and unhindered participation of any kind in the presidential elections (Makunya, 2021).

Overall we can say that no response was noted by the Beninese authorities regarding the renewal of the mandate of the President of the Republic on 11 April 2021. Given the electoral legislation in force and after testimony of the will of the institutions and according to the verdicts cascading from the same Afr. CT.H.R the situation of pursuing illiberal reforms was serious due to constraints enshrined in ratified treaties on freedom, democracy, pluralism and the rule of law.

CONCLUDING REMARKS

From what we have seen till now, the jurisprudential contribution

an appropriate manner, so as to satisfy the greatest possible number of people (...)". According to Kassie Abebe: "(...) refers to the ruling of the Constitutional Court (décision DCC 06-074) which in 2006 had declared a constitutional reform illegitimate precisely due to failure to respect the principle of "national consensus". The reform concerned the proposal to bring the duration of the parliamentary mandate from four to five years, an operation that would have succeeded with the constitutional revision of 2019, which in this way standardized the duration of the legislature to the permanence of the President of the republic (new art. 80 of the Constitution) (...)".

based on the Banjul Charter and related documents of an international nature is indisputable from a theoretical point of view. The Afr.CT.H.R itself boldly followed moments of self-restraint and still continues to work relentlessly and with great strength and determination by analogy, differentiating itself from opinions and reports and case law that resemble the case law of regional, European or inter-American courts. The judges of Arusha do not distance themselves from their duties and insist on condemning the States which consider the reform of the legislation optional and which do not respect the constitutional charters. The Afr.CT.H.R is configured as a super partes continental constitutional Court (Kassie Abebe, 2019) which works on national regulations and according to international standards for the democratic gap concerning the violation of fundamental rights. In theory, there is a certain margin of appreciation by the State (Rainey, Wicks, Ovey, 2021)[28] which does not take a precise position or is called to judge a delicate and sensitive area as an expression of the sphere of sovereignty of individual states and in the rights of democratic participation. Safeguarding these kinds of rights is an important indicator for citizens, democracy and political candidacies. The safeguarding of rights, the sovereignty of individual States, the rights of democratic participation are unique rights that measure the state of health of democracy, i.e. the rule of law to a concrete community. The help of a normative nature ensures a confrontation and representation of political opinions which it is able to guarantee for the plural composition of the bodies of political inspiration, i.e. national and local legislative assemblies as well as the alternation in power for the elected

28See in this spirit from the European Court of Human Rights the case: Yumak and Sadak v. Turkey of 8 July 2008.

holders and the monocratic offices as in the case of the President of the Republic. Candidacies, which necessarily impose the independence and impartiality of the institutions as a minimum element as a guarantee of the political bodies which draw legitimacy from the constitutional courts, the self-governing bodies of the judiciary, the electoral commissions, etc.

Rights that every democratic State claims axiomatically and that always works in this direction. Except that in the African case the Court plays an important role along this path but what would its prospect be for the next few years?

According to the systems that we have investigated in the previous paragraphs, only that of Benin seemed to reassure even relative continuity after the adoption of the 1990 Constitution and towards a relative democratic development. The experiences we have seen above are oriented towards a clear disciplinary path of a constitutional and legislative nature that has to do with elections, political parties, electoral bodies, the reforms approved and the less transparent procedures in recent years as well as the training of a de facto one-party system and the relative disappearance of the opponents also at the institutional level. The situation worsens after the repression of dissent towards civil society and the continued forms of violence by government authorities and the army. The condemnation of the States in question due to the failure to fulfill the obligations concerning the electoral rights of citizens is also expressed by the condemnation against Mali for having violated: "*(...) the duty de créer et de renforcer un organe électoral indépendent et impartial*", as established by Article 17.1 of the Charter on Democracy and by Article 3 of the ECOWAS Protocol. In this case, the Afr.CT.H.R has found that the plurality of institutions,

holders in the legal system considered of various competences in electoral matters but without a clear definition of their areas of intervention, contributes to making the system of reciprocal relations opaque and, in fact, to determine a vulnus to the right of the applicant citizen who had stood as a candidate in the presidential elections of his country[29].

Within this context, it is observed that a sense of intolerance and reluctance accompanies the decisions of the Afr.CT.H.R given that the States are not the subject of reflection and neglect the reports requested, struggle to take their verdicts seriously and do not hesitate to wrong manifesting the will not to comply[30] and also giving a remedy interpretation to the violations as interference in one's sovereign prerogatives. The position of the Beninese government justified the withdrawal of the declaration which allowed the relative presentation of the individual appeals of the NGO in the Court[31]. It is an attitude where the host country of the court adds a certain gravity of the operation as a not irrelevant symbolic value. It is easy to imagine that once the proceedings relating to the appeals brought against the States that have withdrawn the relevant declaration against Tanzania have been exhausted, it is the State in the position of defendant in the

29Afr.CT.H.R, Case n. 29/2018, Oumar Mariko v. République du Mali of 24 March 2022.

30Afr.CT.H.R, case n. 9/2011 (Tanganika Law Society and The Legal and Human Rights Centre v. United Republic of Tanzania, op. cit., par. 43.

31The text of Benin declared that: "(...) son engagement de voir soumettre à la cour les réclamations procédant de la violation des droits humains ne saurait en tout état de cause être perçu comme une habilitation à s'immiscer dans les domaines qui n'ont pas été attribués à sa compétence et dont il résulte une grave perturbation de l'ordre juridique en tous points préjudiciable à la nécessaire attractivité économique des États parties (...) fustige une telle immixtion qui sape les efforts de son attractivité économique et ne peut donc s'empêcher d'en tirer les conséquences qui s'imposent (...)".

proceedings that considers the opportunities to guarantee the relative respect for fundamental rights. According to the Afr.CT.H.R: "(...) threaten not only the effective discharge of its mandate, but its very existence (...)"[32]. It is necessary to change the rudder of the governments by increasing the ratifications of the additional protocol of the Banjul Charter and the number of subscriptions for direct access of citizens to the Afr.CT.H.R.

The new strategic plan of the same Court for 2021-2025 highlights the objective towards a strengthening of the collaborative spirit, the synergy, the complementarity between Afr.CT.H.R, the commission, the institutions of the African union and the various jurisdictional bodies that also include the constitutional courts of individual States, national parliaments and the related stakeholders who promote and protect fundamental rights, the NGOs, the media and civil society by rooting the culture of rights and increasing citizens' trust in the role where the Afr.CT.H.R called upon to carry out.

From a practical and operational point of view, there is a need to equip the Court with adequate financial, material and technical resources, so as to speed up the processes, take care of the rapid translation of the decisions into the four working languages and publication in the website, improve the editorial quality of the rulings.

We point out the opportunity to enhance the use of the amicable settlement of disputes, to enhance the institution of amicus curiae and the technique of the so-called pilot sentences, following the example of the Court of Strasbourg "(...) fostering dialogue with the specialized bodies of the United Nations, involved in the protection of fundamental

32Report of the African Court, op. cit., par. 71 and 72: "(...) some States have stated clearly before the Executive Council that they will not comply with the Court's decisions (...)".

rights, and with the regional, European and inter-American courts (...)". The creation of a monitoring unit on the compliance of the States, with an attached timetable and indication of the results expected in the meantime, should contribute, to a greater extent than what has happened up to now, to the implementation of the decisions and to ensure the effectiveness of the Court's work, on which its very credibility as an institution that guarantees rights in the African regional system depends (Mendes, 2022)[33].

The same Afr.CT.H.R has made the commitment to create a feasible future through a past experience on a path of good governance, democracy, respect for human rights, justice and the rule of law"[34]. Of course the restrictions during the past pandemic, the exercise of rights varied and connected to political life, as well as the possible postponement of electoral consultations are measures that can be deliberated according to the ideology we dare to say of Afr.CT.H.R itself towards the state authorities in an exceptional manner and according to procedures that include every healthy, civil society in respect of legality, proportionality, temporariness, non-discrimination and without affecting the essential content of rights. Faced with this type of emergencies, which will always exist, the Afr.CT.H.R will affirm its essential role as guardian above all of political freedom and in support of the fragile democratic realities on the African continent[35].

33See the Strategic Plan 2016-2020 and the new Strategic Plan 2021- 2025 entitled: Deepening trust in African Court by enhancing its efficiency and effectiveness: (https://www.african-court.org/wpafc/category/strategic-plan/

34From the Agenda 2063 entitled: The Africa We Want, aspiration 5. the text was adopted from the African Unity on May 2013: https://au.int/en/agenda2063/overview

35See the unanimous opinion of 16 July 2021 after the relevant request of the Pan African Lawyers Union (PALU) on the Right to participate in the governement of one's country in the context of an election held during a public health emergency or a pandemic, such as

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